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Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1922

THE FIRST PRESBYTERIAN CHURCH OF FOREST PARK, ET AL.,

Petitioners,

vs.

WILLIAM LOWE, ET AL., AND THE PRESBYTERY OF CHICAGO OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES A. VELDE
JAMES J. MCCLURE, JR.
One First National Plaza
Suite 4600
Chicago, Illinois 60670
Counsel for Respondents

Of Counsel:
JOHN MULDER
135 South LaSalle Street
Room 1010
Chicago, Illinois 60603
GARDNER, CARTON, DOUGLAS, CHILGREN & WAUD
One First National Plaza
Suite 4600
Chicago, Illinois 60670

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Petitioners seek review of an Illinois decision* that requires a local church (petitioner) to convey its property to a superior church organization (the respondent Presbytery of Chicago). Both the local church and the presbytery are a part of a national church organization (United Presbyterian Church in the United States of America). The local church had received the property from the presbytery by an unqualified deed of conveyance. The national church's constitution provides that a presbytery has authority, on dissolution of a local church, to direct the disposition of the local church's property. An Illinois trial court and the Illinois Supreme Court gave effect to this provision in requiring the local church to convey the property as directed by

* *Lowe* v. *First Presbyterian Church of Forest Park*, 308 N.E. 2d 801 (Sup. Ct. Ill. Jan. 1974).

the presbytery. Petitioners claim this decision denies them rights guaranteed by the First and Fourteenth Amendments to the United States Constitution by allowing judicial power "to be delegated to an ecclesiastical body" and violating their "right to access to the civil courts". Their contention is based upon a faulty analysis of recent decisions on church property disputes as well as a misconception of the facts of the case.

Point I of this brief refutes petitioners' contention that only formal documents of title are decisive of church property disputes under the First Amendment; and demonstrates this Court's denial of review in recent cases making the same contention.

Point II shows that the Illinois court's decision is in complete accord with neutral principles of law without inquiry into or determination of religious doctrine.

It will appear that this case falls far short of presenting reasons of the kind set forth in this Court's Rule 19 for granting *certiorari*. The case does not involve a federal question of substance, nor a question that this Court has not determined, nor a decision that is contrary to holdings of this Court.

I.

"FORMAL TITLE" DOCTRINE NOT CONTROLLING

A. First Amendment Does Not Restrict Church Property Decisions to Formal Title Documents

In this Court's latest full opinion on church property disputes, *Presbyterian Church* v. *Hull Church*, 393 U.S. 440 (1968), three crucial sentences (p. 449) explain the controlling considerations under the First Amendment:

> "Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded.

> But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice."

Thus a church property dispute may be decided by the application of "neutral principles of law" but not by resolving "controversies over religious doctrine and practice". Petitioners argue that a third idea, a so-called "formal title" doctrine, provides another approach, which they contend forbids the use of non-title materials in deciding such a dispute, and they complain that the lower court's decision here is an "extreme example" of rejecting that idea. There is no basis for these contentions in decisions of this Court or of state courts.

The "formal title" doctrine was not mentioned in the *Hull* case, although it was referred to in Mr. Justice Brennan's supplementary concurrence in the *per curiam* opinion of *Maryland and Virginia Churches* v. *Sharpsburg Church*, 396 U.S. 367, 368 (1970). The legal and factual materials used there in deciding a church property dispute included the constitution of a superior church organization. Yet the brief *per curiam* opinion stated that the state court decision "involved no inquiry into religious doctrine". Thus the "formal title" doctrine was not followed since non-title documents were considered. The concurrence (p. 370) did state that under the "formal title" theory courts can determine church ownership "by studying deeds, reverter clauses, and general state corporation laws". But there was no indication whatever that the courts were restricted to these materials.

On the contrary, the concurring opinion explained that a state "may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters". One such approach, it was said, is that of *Watson* v. *Jones*, 80 U.S. (13 Wall. 666) 679 (1872), the great church property case which the Illinois Supreme Court carefully followed in the present case. Mr. Justice Brennan ap-

proved the *Watson* approach, although it was said to require determination of the appropriate church governing body "without the resolution of doctrinal questions and without extensive inquiry into religious polity" (p. 370). And the "neutral principles" theory of the *Hull* case was said to provide "another means" for resolving property litigation.

It would be an anomaly in our legal system to confine the evidence to "documents of title". Property rights are not determined solely by such documents. It is a centuries-old process for the courts to enforce obligations of various kinds that are not a part of the formal title to land. A simple example is a contract to convey real estate. The title documents are all in the seller's name without any mention of the purchaser. Yet the courts grant specific performance of the seller's informal promise to convey to the purchaser. The purpose and function of formal title deeds and their recording are to facilitate transfers by protecting *bona fide* purchasers who rely on the formal record.

In the present case, the petitioner local church, as all other local Presbyterian churches, has consented to the provision of the Form of Government of the national church that, on dissolution of the local church, the presbytery directs what shall be done with the local church's property. The Form of Government imposed an obligation on the local church to convey the property just as effectively as a seller's promise to convey his land. The First Amendment does not require the exclusion of the superior church's constitution as a source of a local church's property obligation.

B. Decision of Court Below Accords with Recent Denials of Review

In eight very recent cases this Court has declined to review state church property decisions that were based on materials other than "formal title" instruments:

Oklahoma: *Presbytery of Cimmaron* v. *Westminster Presbyterian Church*, 515 P. 2d 211 (Okl. 1973), *cert. den.* April 22, 1974, Docket No. 73-1362.

Washington: (1) *Presbytery of Seattle* v. *Rohrbaugh*, 79 Wash. 2d 367, 485 P. 2d 615 (1971), *cert. den.* 405 U.S. 996.

(2) *Hillcrest Presbyterian Church* v. *Presbytery of Seattle*, ... Wash. 2d ....., ... P. 2d ....., *cert. den.* April 22, 1974, Docket No. 1350.

New York: *Second United Presbyterian Church* v. *Presbytery of Albany*, 315 NYS 2d 428 (1970), aff'd. 28 NY 2d 722, 269 N.E. 2d 918, app. dis. 404 U.S. 803.

Pennsylvania: (1) *St. John Chrysostom Greek Catholic Church* v. *Elko*, 436 Pa. 243, 259 A. 2d 419 (1969), *cert. den.* 399 U.S. 920.

(2) *St. Michael and Archangel Russian Orthodox Church* v. *Uhniat*, 436 Pa. 222, 259 A. 2d 862 (1969), *cert. den.* 400 U.S. 823.

(3) *Western Pennsylvania Conf. of Methodist Church* v. *Everson Evangelical Church*, 312 A. 2d 35 (Sup. Ct. Pa. 1973), app. dis. April 15, 1974, Docket No. 2197.

Petitioners (p. 12) say of four contrasting court decisions in which a superior church organization was denied control over a local church's property, "lower courts have held that pursuant to the mandate of this Court they must limit their scrutiny to an examination of muniments of title". Neither this Court nor the state courts so held in the cited cases:

In *Maryland and Virginia Eldership* v. *Church of God at Sharpsburg*, 254 A. 2d 162 (Md. Ct. of App. 1969), the court discussed, among other things, the constitution of the superior church but found nothing there that gave the superior church control of the property of a withdrawing local church. The court's consideration of the church constitution shows that the

court was not following the "formal title" doctrine, which was not mentioned. This Court, in dismissing the appeal, expressly stated *per curiam* that the lower court's decision "involved no inquiry into religious doctrine" (396 U.S. at 368).

Presbyterian Church in the United States v. *Eastern Heights Presbyterian Church*, 225 Ga. 259, 167 S.E. 2d 658 (1969), is the Georgia Supreme Court's decision on remandment of the *Hull* case reported at 393 U.S. 440. This Court denied *certiorari*, 396 U.S. 1041. The local church on withdrawal from the general church was held entitled to keep its property, to which it had a deed of conveyance. The general church was denied control of the local church's property because "the constitution of the general church contains no provision governing the situation here" (159 S.E. 2d at 694). Again, the court's consideration of the general church constitution indicates it was not following the formal title doctrine, which was not mentioned.

Serbian Orthodox Church Congregation of St. Demetrius v. *Keleman*, 21 Ohio St. 2d 154, 256 N.E. 2d 212 (1970), *cert. den.* 400 U.S. 827, 91 S. Ct. 54, reversed a trial court's award of local church property to a general church. The "formal title" doctrine was discussed in the opinion, but the reason for the decision was that the trial court's finding was based on a "judicial determination that plaintiff has acted *contra* to the doctrine and tenets of the church" (p. 216) and that the local church was entitled to the property by reference to legal materials "not requiring the resolution of religious tenets or doctrine".

In *Merryman* v. *Price*, 259 N.E. 2d 883 (Ind. App. 1970), *cert. den.* 404 U.S. 852, the opinion discussed "neutral principles of real property law" and the "formal title" doctrine, but the decisive consideration was a trial court's finding that the local church had not become a part of the general church, which had resulted from the merger of two national organizations. Petitioners' contention that the *Merryman* case adopted the "formal title" doctrine is refuted by a later Indiana case, *United*

Methodist Church v. *St. Louis Crossing Independent Methodist Church*, 276 N.E. 2d 916, 922 (Ind. App. 1972), where the court decided that local church property was held for the use of the general church. After discussing the *Merryman* case, the opinion explained that this Court's *Hull* decision and also Indiana and other cases make it clear that "reference by a court to those sections of a controlling church discipline which pertain to the holding of church property . . . is embraced in the concept of neutral principles of law" and the establishment clause of the First Amendment is not violated "where the reference . . . does not involve ecclesiastical inquiries".

It thus appears that this Court has not denied review of any state court decision restricting the consideration of a church property dispute to formal instruments of the title. On the other hand, in at least eight cases in the last five years, this Court has denied review where a church property dispute was decided on the basis of materials other than formal title instruments. This is because the state court decisions, as that in the case at bar, applied "neutral principles of law" without the resolution of any controversy over religious doctrine (*Hull*, 393 U. S. at 449) and "without extensive inquiry into religious polity" (*Sharpsburg* concurrence, 396 U.S. at 370). Court decisions do not support petitioners' attempt to create an interest in this case by representations about judicial acceptance of the "formal title" doctrine and "confusions" over the application of neutral principles.

II.

SETTLED GENERAL RULES ("NEUTRAL PRINCIPLES") OF STATE LAW WERE APPLIED BY LOWER COURT

It is easy to demonstrate how the lower court's decision is based on neutral principles of law that were developed for use in all property disputes. The background facts, not adequately stated in the *certiorari* petition although carefully explained in the opinion below (308 N.E. 2d at 806), are clear. In 1913

the respondent authorized the organization of the Pioneer Presbyterian Church of Forest Park, which was the petitioner local church under a prior name. The local church was authorized in accordance with the Form of Government of the United Presbyterian Church in the United States of America,* to which the Chicago presbytery and the local church were subordinate. The local church was incorporated under Illinois law as required by the national organization's constitution or bylaws, known as "Form of Government". In 1958 an agency of the presbytery conveyed the property in question to the local church for $1.00 by an unqualified deed. The presbytery continued to supervise the property by reviewing mortgage terms, improvement expenditures, etc. As the opinion below stated, "Since the original formation of the Pioneer Presbyterian Church some sixty years ago, defendants [petitioners] have been an integral part of the United Presbyterian Church".

On October 8, 1968, the presbytery adopted a resolution dissolving the congregation of the petitioner local church and directed its liquidation. The Presbyterian Form of Government provides, "Whenever . . . a particular church is formally dissolved by the presbytery", the church's property shall be held and used "as the presbytery may direct" (Abst. 3-4). The presbytery directed the title to the local church's property to be placed in an agency of the presbytery. When the local church refused to convey the property as demanded, this action was brought to compel the conveyance.

The applicable legal principle, stated at the end of the lower court's opinion (p. 807), is that where a local church is a subordinate member of a superior general church organization and has consented to its form of government, the local church is

* A different national organization, although named "Presbyterian Church in the United States", was involved in *Presbyterian Church* v. *Hull Church*, 393 U.S. 440 (1968). Although that organization was hierarchical, the case did not involve the dissolution of a local church by a presbytery under a church rule that, on dissolution, the property of the local church shall be "held, used, and applied" as the presbytery directs.

bound by the general church's decisions. In Illinois the principle goes back at least as far as a 1910 decision* involving the same general church. The court there stated that, where a religious corporation holding title to church property is subordinate to some general church organization in which a superior tribunal has control over church members, the judgment of that tribunal must be followed by the civil courts "in the determination of such property rights as the civil courts may be called upon to adjudicate". The 1910 decision (as the present one) relied strongly on the analysis in the leading early church decision in this country, *Watson* v. *Jones,* 80 U.S. (13 Wall. 666) 679 (1872), which fully explained the legal effect of the hierarchical organization of certain churches.

The principles that general church rules control the disposition of local church property is an application of a wider principle stated in one sentence in the *Watson* case:

> "All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it." (13 Wall. 676.)

The broad principle appeared in Mr. Justice Brandeis' statement for a unanimous court in *Gonzalez* v. *Roman Catholic Archbishop,* 280 U.S. 1, 16 (1929), that the decisions of church tribunals (absent fraud, collusion, or arbitrariness) are accepted in litigation over civil rights "because the parties in interest made them so by contract or otherwise". He explained further,

> "Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil associations".

An Illinois decision was cited in *Gonzalez* for the broad principle, *Engel* v. *Walsh,* 258 Ill. 98, 103 (1913). There, in holding that "a union member was bound by a union decision", the court said that each member of "churches, lodges, labor unions

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* *First Presbyterian Church* v. *First Cumberland Presbyterian Church,* 245 Ill. 74, 91 N.E. 761 (1910).

and other like voluntary associations" agrees on becoming a member "either by express stipulation or implication . . . to abide by all rules and regulations adopted by the organization".

The widespread judicial enforcement of a general church's property rules against a local church is indicated by many court decisions. A recent annotation, "Determination of Property Rights Between Local Church and Parent Church Body: Modern View", 52 ALR 3rd 324-427 (1973), reviews hundreds of court decisions. Noting the hierarchical structure of the Presbyterian Church and litigation over local churches' claimed right to withdraw from the general church and retain local church property, the annotation states (p. 418) that, as cited cases illustrate,

> "This right is uniformly denied, on the ground that the local Presbyterian Church stands in a hierarchical relationship to the general church, with respect to property matters as in other areas".

Decisions of the courts of Delaware, Florida, Indiana, New Jersey, New York, North Dakota, and Washington are cited,* in addition to *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1972).

For the courts to enforce the property rules of a church organization is not to "establish" a state religious organization or interfere with the religious rights of dissident church members. The reason is that church members, as those of associations such as labor unions, clubs, etc., have promised to abide by and have consented to the rules of the organization by becoming members

* Two recent similar state court decisions are *Wyche* v. *Alexander*, 189 S.E. 2d 608 (Ct. of App. No. Car. 1972), *cert. den.* by Sup. Ct. No. Car., 191 S.E. 2d 361; *Norfolk Presbytery* v. *Bollinger*, 201 S.E. 2d 752 (Sup. Ct. Va. Jan. 1974). In the latter case, the opinion stated: "We do not construe *Hull* as requiring that courts apply neutral principles of law by considering only the record title to church property . . . As express trusts for supercongregational churches are invalid under Virginia law no implied trusts for such denominations may be upheld. But this does not mean that our civil courts are powerless to prevent a hierarchical church from being deprived of contractual rights in church property held by trustees of a local congregation" (201 S.E. 2d at 756 and 758).

of it. The non-religious nature of this legal principle was indicated by this Court's explanation of it in the *Watson* and *Gonzalez* cases noted above.

The Illinois Supreme Court's decision in this case complied strictly with this Court's recent discussions and holdings on church property disputes. The evidence showed with overwhelming detail that the petitioner local church was a subordinate part of the general church; and it is beyond dispute that the general church's constitution required the local church, on its dissolution, to reconvey the property in question despite its unqualified deed of conveyance. The Illinois Supreme Court applied "neutral principles of law, developed for use in all property disputes", without "the resolution . . . of . . . religious doctrine and practice" (*Hull*, p. 449), and "without extensive inquiry into religious polity" (concurrence, *Sharpsburg*, p. 370). In giving effect to the presbytery's direction to the local church to reconvey the property, the Illinois Supreme Court did not delegate power to the presbytery nor deny the local church's right to a judicial decision. The court merely enforced the local church's obligation to convey the property in accordance with the organizational principles to which it had bound itself.

CONCLUSION

Respondents urge the denial of the petition for *certiorari.*

Respectfully submitted,

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JAMES A. VELDE
JAMES J. MCCLURE, JR.
One First National Plaza
Suite 4600
Chicago, Illinois 60670
Counsel for Respondents

Of Counsel:
JOHN MULDER
135 South LaSalle Street
Room 1010
Chicago, Illinois 60603

GARDNER, CARTON, DOUGLAS,
CHILGREN & WAUD
One First National Plaza
Suite 4600
Chicago, Illinois 60670